

## **Title 1**

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### **CODE ADOPTION**

(Reserved)

#### **Chapter 1.04**

### **GENERAL PROVISIONS**

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#### **1.04.010 Definitions.**

The following words and phrases, whenever used in the town code, shall be defined and construed as follows in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases in a specific chapter of the town code:

*Agriculture crop* means the raising and incidental storage of agricultural products (including farm crops, fruits, vegetables or nursery stock) for sale, gain or commercial purposes. This term does not include the processing, packaging and/or handling of agricultural products for sale off lot as the principal use.

*Agriculture livestock* means the raising of agricultural products (including livestock, poultry, dairy cattle, fur-bearing animals, bees, other such animals, and associated feed crops) for sale, gain or commercial purposes. This term does not include riding academy, private stable or processing, packaging and/or handling of agricultural products as the principal use.

*Agri-Business* means a principal use that involves the following:

1. Wholesale raising, processing, packaging or other handling of non-food plant crops such as annual and/or perennial plant production and may include minor retail sales as accessory use;
2. Any business that has as the primary function support service of active agricultural operations; or

3. Any business that provides processing, packaging, or handling of agricultural products to prepare them for transport to a manufacturing facility or retail market. This use does not include; cooking, canning, or other preparation of food stuffs, nor use as a facility for the slaughter, processing and/or packaging of livestock, meat, and/or meat by-products for off-lot sale.

*Airport* means any lot, designed to be used and/or operated either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings.

*Alternative dwelling park* means a contiguous parcel of land under single ownership on which two or more mobile homes or homes of any other styles of construction having less than one thousand two hundred (1,200) square feet and/or having any one overall exterior dimension of less than twenty (20) feet are located.

*Alteration* means any change, rearrangement, modification, addition or enlargement to a structure other than repairs.

*Amusement center* means a continuous commercial use in which six or more mechanical, electrical or electronic machines or devices used or designed to be operated for entertainment or as a game, and either activated by the insertion of a coin or token for their operation or use of which a charge is made.

*Antenna* means a fixed-base structure used for receiving or transmitting telephone, television or radio electro-magnetic signals from orbiting satellites or ground communications sources.

*Applicant* means an owner of a lot on which a development is proposed, and the developer of such parcel and/or a person, firm, corporation, or group presenting documentation to an office of the town requesting a permit, approval, variance, or special dispensation on behalf of himself, herself or others.

*Application* means all written instruments including plans, specifications, forms, photographs, graphic depictions, letters and other documents submitted to the town for a determination or review by an approval authority.

*Approval authority* means an employee, department, officer, board or commission of the town that has been granted authority to review and accept plans and applications related to the responsibility and obligations of such employee, department, office, board or commission.

*Aquifer* means an area consisting of saturated, permeable geologic material capable of yielding water to wells and springs.

*Attic* means that space of building which is between the top of the uppermost floor construction and the underside of the roof. (See Story.)

*Auto Salvage Yard.* See Salvage yard.

*Bar* means a business establishment licensed by the state of New York to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the lot, regardless of whether food or entertainment are provided as accessory use.

*Barrier* means a structure and/or plant materials that obstruct visual and/or noise impact on a use from another use and which is located in a buffer.

*Basement* means any space of a building which is partly below finished grade, but having more than one-half of its height measured from floor to ceiling above average finished grade. (See Cellar.)

*Bed and breakfast* means a building containing a one unit dwelling in which at least one, but not more than four, sleeping rooms are provided by the owner for compensation, for the accommodation of transient guests with no more than two meals served daily and the entire service included in one stated price.

*Bill Board.* See Sign, Off Lot.

*Board-foot* means a measure of lumber twelve (12) inches by twelve (12) inches by one inch.

*Boarding house* means a building, other than a hotel/motel or bed and breakfast, containing a general kitchen and a general dining room, in which at least three, but no more than six, sleeping rooms are offered for rent, with or without meals to nontransient guests. A lodging house, or rooming house shall be deemed a boarding house.

*Buffer* means an area of land forming a physical separation between two uses.

*Buildable lot* means a lot having reasonable access to a public road and capable of supporting a potable water supply and sewage disposal on site.

*Building* means any structure which is wholly or partially enclosed within exterior walls, is affixed to the land, has one or more floors and a roof, and is intended for occupancy, housing or shelter for persons or animals or intended for storage of personal property.

*Building area* means the total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings including open or enclosed porches, attached carport or garage but exclusive of terraces, and uncovered steps. Such horizontal area of each building is the area within and circumscribed by the exterior faces of the outer walls and/or architectural elements of the building.

*Building, Accessory. Accessory building* means an accessory structure that is a building.

*Building group* means a group of two or more principal buildings and any accessory buildings occupying a lot in one ownership and having any yard in common.

*Building Height. See Structure height.*

*Building permit* means a permit issued by the town code enforcement officer in accordance with the requirements of the New York State Uniform Fire Prevention and Building Code.

*Building, Principal. Principal building* means a building where the principal uses of the lot is conducted and situated.

*Building, Semi-Detached. Semi-detached building* means a building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

*Bulk* means a term to describe the size, volume, area and shape of a structure and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures, or other walls of the same building; and of all open spaces required in connection with a structure or lot.

*Bulk storage* means materials stored in large quantities which are dispensed in smaller units for use or consumption as regulated in the town code.

*Car wash* means a building, lot or portions thereof where vehicles are washed either by the patron or others using machinery and mechanical devices specifically designed for this purpose.

*Cellar* means that space of a building that is considered nonhabitable and is partly or entirely below average finished grade, which has more than half its height, measured from the floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building. (See *Basement*)

*Certificate of compliance* means a certificate issued by the town for those buildings or structures or any other non-habitable space or portion thereof, not intended for human occupancy.

*Certificates of occupancy* means a certificate issued by the town for those buildings or structures, or portion thereof, intended for human occupancy on a continuing basis.

*Church. See Place of worship.*

*Circuses or other exhibitions* shall mean any theatrical representations, concerts, carnivals, circus feats, or horsemanship, or other natural or artificial curiosity, or any other show, exhibition or performances.

*Clear-cutting* means a method of harvesting where virtually all trees on a site are removed.

*Clear vision zone* means a volumetric zone at an intersection, of any combination of roads, drives, internal drives and driveways permitting a visual line of sight and defined by a geometric sector of certain radius in a base plane in feet above finished grade and by a zone height extending a certain number of feet above the base plane.

*Club, Membership. Membership club* means an organization catering exclusively to members and their guests, and lot and or building for social, educational, service, recreational or athletic purposes, which are not conducted primarily for gain, providing there are no vending stands, merchandising, or commercial activities except as when limited to the use of the membership or guests for the club purposes.

*Code enforcement officer (CEO)* means an official designated by the town board for the purpose of enforcing codes, laws, ordinances, rules, regulations and conditions set by resolution of the town board, town planning board or town zoning board of appeals.

*Commercial vehicle* means any vehicle with a net vehicle weight of five tons or more and/or more than four axles, or trailer longer than eighteen (18) feet used or designed to be used for the commercial transportation of persons, goods, wares or merchandise.

*Condominium* means a building or building group, in which residential dwelling units, commercial or industrial units are owned individually with common areas and facilities owned jointly by all the owners of individual space within the building or building group.

*Consultant* means a person, firm, corporation, or group, deemed qualified and employed to provide professional advisory services to the town in regard to a specific application, project or proposal.

*Consulted agencies* means each government agency having decision-making authority applicable to a proposed development and private consultant designated by such governmental agency.

*Contractor's equipment yard* means any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery, or vehicles, or parts thereof, and/or building materials, soil and/or stone stockpiles.

*Convalescent home* means a *building used* for accommodation and care of persons receiving non-skilled, long-term care, meeting the New York State Department of Social Services (NYSDSS) definition of a proprietary facility. (See also *Nursing home*.)

*Convenience mart* means a *retail use* that combines two *principal uses* on a single *lot*; the sale of *motor vehicle* fuel and accessory substances, as well as the sale of groceries.

*Cottage industry* means a business conducted as an *accessory use*, which is clearly incidental to or secondary to a residential use of a dwelling unit and which: (a) does not change the character of the residential *use*; (b) is carried out wholly within the enclosed walls of the *dwelling unit* and/or an *accessory structure* located on the same lot as the *dwelling unit*; and (c) is operated by a resident of the *dwelling unit* and with up to three *employees* who do not reside in the *dwelling unit*.

*County* means the *county* of Chemung.

*Coverage* means that *lot area* or percentage of *lot area* covered by *buildings*, including *accessory structures*, and all other impervious surfaces.

*Day care of adults* shall be as defined and licensed by the NYSDSS pursuant to the NYS Social Services Law and related rules and regulations.

*Day care of children* shall be as defined and licensed by the NYSDSS, pursuant to the NYS Social Services Law and related rules and regulations, to include care provided for three or more children away from their own homes in a *day care center*, excluding those children receiving *family day care* as defined in this code. Such care shall be for more than three hours and less than twenty-four (24) hours per day per child to any child accepted for care therein. The term *day care of children* includes *services* provided with or

without compensation or payment.

*Day care center* means a place, person association, corporation, institution, or *agency* which provides day care for children as defined and licensed by NYSDSS pursuant to the NYS Social Services Law and related rules and regulations. The name, description, or form of the entity, which operates a *day care center*, shall not affect its status as a *day care center*. The term *day care center* shall not refer to care provided in:

1. A day camp as defined in the state sanitary code (10 NYCRR Chapter I);
2. An after school program operated by a *private school* or religious organization; or
3. A facility operated by a public school *district* or providing day *services* under an operating certificate issued by the *department* of mental health.

*Day Care, Family Home. Family home day care* means day care provided in the care givers' residence in accordance with NYSDSS rules and regulations.

*Day Care, Group Family Home. Group family home day care* means day care provided in the caregivers' residence in accordance with NYSDSS rules and regulations.

*Density* means the minimum *lot area* per permitted *principal use*.

*Design engineer* means an engineer, architect, designer or surveyor licensed to practice in the state of New York.

*Developer* means any entity or person to undertake a proposed *development*.

*Development* means any manmade changes to improved or unimproved real estate, including but not limited to, the construction or reconstruction of *buildings* and/or *structures*, impervious surfaces, construction of tanks or other storage facilities, pumps, pumping stations, waste treatment or disposal facilities or commercial excavation dredging, filling, mining or grading.

*Diameter limit cutting* means a method of harvesting where merchantable trees of a particular diameter or larger are cut.

*Director of water systems* means an official designated by the *town board* for the purpose of managing and directing the day-to-day administration of the *water districts* and *water department* or his or her duly authorized agent.

*District* means that mapped portion of the town within which specific *uses* are permitted according to the designation applied thereto in Chapter 17.08 and the statement of intent set forth in Chapter 17.12, and in conformity with the requirements of this law.

*Drive* means an improved way that provides or is designed to provide vehicular access between a *road* and a *parking area* and/or an *internal drive*.

*Drive, Internal. Internal drive* means an improved way that provides or is designed to provide vehicular access between a *drive* and one or more *uses* on the same *lot*.

*Drive through use* means any commercial or business *use* which includes an *improvement* such as a *service* window, booth or other like arrangement on the exterior of a principal or *accessory structure* which is for *drive-through* or carry-out *service*.

*Driveway* means an improved way on a lot containing a *one-unit dwelling* and/or *two-unit dwelling* and providing or designed to provide vehicular access between the residential *use* and a *road* and/or *drive* or *internal drive*.

*Dump. See Solid waste disposal facility.*

*Dwelling, In-Ground. In-ground dwelling* means a *dwelling unit* that is constructed principally below the average *finished grade* elevation of the *lot* on which it is located and with at least one wall open for a height of at least six feet and/or provide for special light and ventilation design.

*Dwelling, One-Unit. One-unit dwelling* means a *building* containing one *dwelling unit* that is:

1. Detached having two *side yards*; or
2. Semi-detached having only one *side yard* and one common party wall.

*Dwelling, Two-Unit. Two-unit dwelling* means a building containing two *dwelling units*.

*Dwelling, Multiunit. Multiunit dwelling* means a *building* containing three or more *dwelling units*.

*Dwelling unit* means one or more rooms, connected together, with provision for living, cooking, sanitary and sleeping facilities arranged for the *use* of one *family* or household. This shall include *mobilehomes*, *house trailers* and *factory manufactured homes*, provided they meet the requirements of this code and the NYS Uniform Fire Prevention and Building Code. This definition shall not include a motel, hotel or a *boarding house*.

*Easement* means a recorded *right-of-way* or right of *use* held by a person or entity from an *owner* of a *lot*.

*Factory manufactured home* means a *dwelling unit* constructed off-site, consisting of one or more segments and designed to be affixed to and supported by a foundation, as part of the real estate. Such *dwelling unit* shall bear an insignia of approval issued by the Division of Housing and Community Renewal of the state of New York.

*Family* means a household consisting of a single housekeeping unit occupied by one or more persons. (See the NYS Uniform Fire Prevention and *Building Code*.)

*Fence* means a *structure*, constructed of wood, masonry, stone, wire metal or any other manufactured material or combination of materials, erected in the minimum *setback*.

*Flea market* means a *lot* or *parcel* with outdoor stalls, booths, or selling spaces *used* for the display or sale of used or new goods, wares, merchandise, antiques, collectibles and arts and crafts.

*Finished grade* means an elevation of a line that is parallel to finished surface of the surrounding land at the point of intersection with the surrounding grade with the walls or supports of a *building* or *structure*. When computing the height of a *building* or structure and the line of intersection is not reasonably horizontal, the *finished grade* shall be the mean elevation of all finished grade elevations around the periphery of the *building*.

*Floor area* means the aggregate sum of the gross horizontal area of the floor or several floors of the *building* or *building group* as measured from the exterior walls or from the centerlines of the walls separating the *buildings*. The *floor area* of a *building* or *building group* shall include:

1. *Basement* space;
2. Elevator shafts and stairwells at each floor;
3. Floor space for mechanical equipment, with structural headroom of seven feet six inches or more;
4. Penthouses;
5. *Attic* space (whether or not a floor has actually been laid) providing structural headroom of seven feet six inches or more for at least fifty (50) percent of the *area*;
6. Interior balconies and mezzanines;
7. Enclosed porch or attached garage;
8. *Accessory use*, exclusive of space for *parking lots*.

However, the *floor area* of a *building* shall not include:

1. *Cellar* space, except that *cellar space used* for retailing shall be included for the purposes of calculating requirements for accessory off-street *parking* spaces and accessory off-street loading berths;
2. Elevator and stair bulkheads, accessory water tanks, and cooling *towers*;
3. Floor space *used* for mechanical equipment, with structural headroom of less than seven feet six inches;
4. *Attic* space, whether or not a floor has actually been laid, providing structural headroom of less than seven feet six inches for fifty (50) percent of the area;
5. Uncovered steps and/or exterior fire escapes;
6. Terraces, breeze ways, open porches, and outside balconies and open spaces;
7. Accessory off-street *parking* spaces;
8. Accessory off-street loading berths.

*Footprint* means the perimeter of a *structure* at ground level as depicted on a scaled drawing.

*Haul road* means a constructed *road* of dirt and/or gravel utilized for moving cut trees from the point where they were loaded on a truck to an exit from the site.

*Hawker or peddler* means and includes any person, either principal or agent, who, from any car or railroad track, or in any public street or public place or by going from house to house, or place of business to place of business, on foot, or on or from any animal or vehicle sells or barter, offers for sale or barter or carries or exposes for sale or barter any goods, wares or merchandise, except milk, water or newspapers.

*Health care clinic* means a place where medical, dental, vision, nutrition, physical therapy, chiropractic and other similar health care *services* are furnished to persons on an out-patient basis by three or more physicians or professional health care providers who have common offices in a *building* which may also offer laboratory/testing facilities, medical or surgical procedures, and similar health care *services*.

*Heliport* means any *lot* or other facility *used* or designed to be *used*, either publicly or privately, by any person for the *landing* and taking off of helicopters, including all necessary taxiways, aircraft storage and tie-down *areas*, hangars and other necessary *buildings*.

*Home occupation* means an occupation or profession conducted as an *accessory use*, clearly incidental and secondary to the residential *use* of a *dwelling unit* and which does not change the character of the *dwelling unit*, and which is carried on wholly within the enclosed walls of the *dwelling unit* by only a resident of the *dwelling unit*.

*Hospital* means an institution for the care and treatment of sick and injured, equipped with technical facilities, medical, nursing and other professional and technical personnel necessary for diagnosis and treatment of persons suffering from sickness or injury who may require bed care. (See the NYS Public Health Law.)

*Hotel/motel* means a *building*, or any part thereof, which contains living and sleeping accommodations for transient occupancy, which may have a common exterior entrance or entrances and which may or may not include dining and/or meeting facilities. This term shall not include a bed and breakfast, or *boarding house*.

*House trailer* means a transportable, factory-built *structure* designed to be *used* as a year-round *dwelling unit* and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Requirements Act of 1974, which became effective June 15, 1976.

*Improvements* means constructed or installed facilities, other than *buildings*, including but not limited to *drives* or *internal drives*, utilities, *parking areas*, *roads*, the entire storm water management system and components, domestic and fire protection water supply,

and public sewer, except those portions thereof that are the responsibility of the town water *district*, Chemung County department of public works, and Chemung County sewer *district* no. 1, and other similar facilities needed to support the principal or *accessory use*.

*Industrial use* means any activity conducted in connection with the manufacture, assembly, disassembly, fabrication, painting, coating, resource recovery, storage or processing of materials or products.

*Inspection fee* means a fee charged as a percentage of the project cost in accordance with this code to accommodate the cost of inspection of all proposed public improvements approved as part of a *site plan*, special permit or *subdivision approval*.

*International one-quarter inch log rule* means a professional recognized and accepted methodology for grading and measuring logs.

*Kennel* means any *lot* or *structure used* or maintained for the boarding, breeding, sale, letting for hire or the commercial training of dogs and/or cats.

*Kindergarten* means any place operated on a regular basis for the purpose of providing state certified instruction for children at least five years of age by December 1st of the entry year and less than six years of age by the same date. The term *school* includes *kindergarten*.

*Landing* means an open or cleared area *used* for loading logs onto trucks or *used* for any general purpose such as for storing logs or for servicing equipment.

*Large tree* means a live deciduous tree that is a minimum of twelve (12) inches diameter breast height (dbh).

*Lawn and garden sales* means the *use* of a *lot* or *structure* or any part thereof for the display, sale, lease and/or repair of equipment and/or new or used vehicles not licensed for *use* on a public *road* and for the display and sale of materials, each of which is designed and intended for: (a) establishing and maintaining a lawn and/or garden; and/or (b) residential small scale snow removal.

*Logging slash and debris* means any residue of trees or of the associated cutting left on the site after harvesting operation, including, but not limited to, undesirable tree trunks, tree tops and litter.

*Lot* means a measured unit of contiguous land, whether improved or unimproved, having fixed boundaries and designated on a plat or survey devoted to a specific *use* or occupied by a *building* or a *building group*, united by a common interest, *use* or ownership, which abuts and is accessible from a *road* or *drive*, and that is not divided by any *watercourse*, existing *road* or public *right-of-way*.

*Lot area* means the total area within the *lot* boundary lines excluding any area within a *right-of-way* and any area within twenty-five (25) feet of the centerline of a *private road*.

*Lot, Corner. Corner lot* means a *lot* situated at the junction of and adjacent to two or more intersecting streets when the interior angle or intersection does not exceed one hundred thirty-five (135) degrees.

*Lot Coverage. See Coverage.*

*Lot depth* means the mean distance from the *front lot line* to rear *lot line*.

*Lot line* means the lines bounding a *lot*.

*Lot Line, Front. Front lot line* means a *lot line*, which is coincident with the *right-of-way* boundary line of a *road*, other than a *private road*, or which is measured twenty-five (25) feet from the centerline of a *private road*.

*Lot, Through. Through lot* means a *lot* which faces on two *roads* at opposite ends of the *lot* and which is not a *corner lot*.

*Lot width* means the width of a *lot* measured along the minimum *front yard setback*.

*Lot width "flag lots"* means the distance between the side *lot lines* measured at the minimum *front yard setback*, or in the case where a minimum front *setback* is established by the planning board at the time of *subdivision approval*, which line is further removed from the *front lot line* than the minimum *front yard setback* established for the zoning *district*.



*Mall* means a *building* or *building group* containing a combination of three or more separate business and/or *industrial uses*.

*May* means permissive.

*Mini-storage facility* means a *building* or grouping of *buildings* designed and constructed with individual partitions or compartments for the storage of property. This definition shall not include the wholesale storage, warehousing, *truck terminals*, and/or other transfer facilities for goods, wares or merchandise.

*Minimum stump diameter* means the designated diameter of the stumps of trees to be cut, which diameter of the remaining stumps can be checked after the tree is cut.

*Mobilehome* means a *dwelling unit* bearing a seal issued by the Federal Department of Housing and Urban Development that is manufactured as a moveable *dwelling unit*, which is designed to be transported on a single permanent chassis and to be installed on a site with or without a permanent foundation when connected to utilities. This definition does not include a recreation vehicle that is registered by a State Department of Motor Vehicles.

*Motor vehicle* means an automobile, truck, or other vehicle designed to be driven upon public highways which is propelled by any power other than muscular power, except, electrically driven mobility assistance devices operated or driven by a person with a disability, vehicles which run only upon rails or tracks, snowmobiles as defined in NYS Vehicle and Traffic Law and all terrain vehicles. For the purposes of this code, the term *motor vehicle* shall exclude official fire and police vehicles.

*Must* is mandatory.

*Night club* means a place of entertainment whose *principal use* is provision of music and space for dancing by patrons on a *lot*, regardless of whether alcoholic beverage, food or other entertainment is provided as *accessory use*.

*Notice of compliance* means a notice issued by the *CEO* upon completion of construction, *alteration* or change in occupancy classification pursuant to the NYS Uniform Fire Prevention and Building Code of a *building* and/or *lot*. The notice shall acknowledge satisfactory compliance with the requirements of this law, any conditions of approval attached to such use by an authorized board of the town, and any adjustments thereto granted by the zoning board of appeals. The notice is a permit to use the *structure* and/or *lot* in accordance with the approval.

*Nursery school/pre-kindergarten* means a *private school* organized for the purpose of educating three or more children less than seven years of age for less than three hours per day (although two sessions may be held daily), and shall be registered and certified by the NYS Department of Education. (See also *Day care center*.)

*Nursing home* means a facility with a *principal use* of nursing care as defined and regulated by the state. (See also *Convalescent home*.)

*Oath* includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an *oath*, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

*Occupant* means any person who occupies or *uses* the whole or a part of such *building* or land, whether alone or with others.

*Office, General Business. General business office* means a business, office or *agency* providing *service* to the general public or other offices and agencies, such as insurance brokers, real estate agents, computer programming, consulting organizations or similar *service* businesses.

*Office, Professional. Professional office* means an office principally occupied by a professional licensed by the state of New York such as a lawyer, engineer, architect, accountant, physician, chiropractor, therapist, dentist or similar occupation.

*Owner*. As applied to a *building* or land, means and includes any person who is a part *owner*, joint *owner*, *tenant* in common, joint *tenant*, *tenant* by the entirety, of the whole or a part of such *building* or land. As applied to *personal property*, *owner* means any person who possesses an interest in such *personal property*.

*Outdoor lighting* means outdoor, electrically powered illuminating device, lamps, light or reflective surface, *used* or designed to be used for illumination of a *structure, sign, improvement* and/or *lot*.

*Parcel*. See *Lot*.

*Parking* means the standing of a vehicle, whether occupied or not, otherwise then temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

*Parking area* means an area for the *parking* and/or storage of *motor vehicles*.

*Parking area of a shopping center* means an area or areas of private property totaling at least one acre, near or contiguous to and provided in connection with *premises* having one or more stores or business establishments and *used* by the public as a means of access to and egress from such stores and business establishments and for free *parking* of the *motor vehicles* of *customer* and patrons of such stores and business establishments.

*Parking lot* means any *lot* where principal or *accessory use* is a *parking area*.

*Pass through* means the cost of *services* provided to the town by a consultant in the review of an *application*, as paid to the town by an *applicant* to be held in a special account designated to pay for the specific fees charged by the consultant as related to a specific project or plan.

*Permit, Building*. *Building permit* means a permit issued by the town *CEO* in conformance with this code, the New York State Uniform Fire Prevention and Building Code and/or any other *building* code, rule or regulation adopted by the town.

*Person* means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization or any manager, lessee, agent, servant, officer or *employee* thereof.

*Personal property* means money, goods, chattel, things in action and evidences of debt.

*Personal service establishment* means a nonretail *use* providing *service* related to an individuals' care and upkeep need, such as manicurist, barber shop or beauty parlor, and the upkeep of personal attire, such as tailor, seamstress, or shoe repair. This definition shall not include facilities *used* for appliance, vehicle, small engine repair or similar *use*.

*Place of worship* means a *building* or *lot used* predominantly for public worship by members or representatives of a religious sect, group, or organization as recognized by state statute and any other *use* must be de minimis.

*Plaza*. See *Mall*.

*Premises* means:

1. A property or location whether or not occupied by a *structure* and shall include the entire front footage thereof abutting on a street where the *service* of water is requested or furnished for any part thereof;
2. A *building* under one roof owned or leased by one *customer*, and occupied as one residence or place of business;
3. A combination of *buildings* owned or leased by one *customer*, in one common enclosure, occupied by one *family* or one person, as a residence or place of business;
4. Each unit of a multiple unit *dwelling* or *building* separated by a solid vertical partition wall, occupied by one family, or person, as a residence or a place of business;
5. A building owned or leased by one customer having a number of dwelling units, offices, lofts other spaces rented to tenants, and using common hall(s) and one or more means of entrance;
6. A building two or more stories high under one roof, owned or leased by one customer having an individual entrance for the ground floor occupants and one for the occupants of the upper floors;

7. A multiple dwelling owned by a person located in one common enclosure;
8. An alternate dwelling park owned by one person;
9. A combination of buildings owned by a person and leased by one or more customers as a residence or place of business.

*Professional forester* means a graduated forester from an accredited forestry college who has at least two years of experience in the field of forest management or timber product harvesting.

*Project cost* means the total estimated construction cost or costs associated with buildings, accessory structures, signs, required highway improvements, driveways, parking lots, site preparations, landscaping, and utility installation as they relate to a particular project or project site.

*Property* means real and personal property.

*Real property* means lands, tenements and hereditaments.

*Recreational vehicle (RV)* means a motorized vehicle or trailer that can be registered by the NYS Department of Motor Vehicles, which is designed to be primarily used for temporary living or sleeping purposes while traveling and which is customarily standing on wheels or removable rigid supports.

*Restaurant, Fast Food. Fast food restaurant* means an establishment where food and/or beverages are sold in a form ready for consumption and where, by design, packaging and sales techniques, significant revenue is derived from food sales where consumption takes place off-lot.

*Restaurant, Standard. Standard restaurant* means any establishment whose principal use is preparation and sale of food for consumption by patrons on the lot. This term does not include a public park snack bar.

*Retail* means a business or commercial use or activity involving primarily the sale or exchange of goods, wares and merchandise or stock-in-trade to the public which may include some fabrication on-site of goods or merchandise that are sold on the lot containing such use or activity.

*Right-of-way* means property under public control, ownership, or easement, by deed or by operation of law and used or intended to be used for travel by persons and/or vehicles.

*Road* means an existing public or private way that has been improved to afford vehicular access to a lot.

*Road, Local. Local road* means a road designed primarily to provide vehicular access only to a lot that abuts it.

*Road, Marginal Access. Marginal access road* means a local road that is parallel and adjacent to a primary road that is connected to the primary road by another short local road.

*Road, Primary. Primary road* means a state, county or town road that serves or is designed to serve heavy flows of vehicular traffic and which is used primarily as a route for vehicular traffic between communities and/or other heavy traffic areas.

*Road, Private. Private road* means an improved way that is used or designed to be used to provide access to lots which abut it, that is built to town specifications, and remains in the ownership of and is maintained by the developer or development association, and is not dedicated to the town.

*Road, Secondary. Secondary road* means a town road which serves or is designed to serve as a vehicular traffic way within a neighborhood or as a feeder to a primary road.

*Road, Town. Town road* means a road that is controlled, maintained, and owned by the town by deed or by operation of law.

*Roadside stand* means a lightweight structure with or without a roof, whether attached to the ground or movable, that is an accessory use, not for year-round use and where agricultural produce grown on the lot is offered for sale to the public.

*Salvage yard* means a lot with or without a building used or occupied for the storage, sale, or salvage of junk material, including processing such as sorting, baling, packing, disassembly, exchange, purchase and/or sale of materials, and including scrap metals or other scrap, used or salvaged building materials, or the dismantling or demolition of automobiles or other vehicles, tires, machinery or parts thereof. This term shall not include the storage, uses or salvage of agricultural machinery on an operating agricultural or agribusiness uses.

*School, Private. Private school* means an elementary or secondary school facility operated by a person, firm, corporation, or organization (other than a public school district), giving academic instruction in the ten (10) common learning areas of arithmetic, reading, spelling, writing, the English language, geography, history, civics, hygiene and physical training, registered and/or certified under the requirement of the commissioner of the NYS Department of Education or chartered by the Regents of the University of the state of New York.

*Selection cutting* means a method of harvesting where trees to be cut are selected and marked via some specified criteria before the harvesting begins.

*Setback* means a line, generally parallel to a lot line and spaced equidistant therefrom by a distance specified in Section 17.16.020 or a line generally parallel to an edge of a drive or internal drive and spaced equidistant therefrom by a distance specified in Chapter 17.20.

*Shall* is mandatory.

*Sign* means any letter, number, mark, symbol, figure, picture, exemplary device and/or banner (each and/or all hereafter referred to as "symbol") used or designed to be used to express, advertise or display an idea, instruction, product, commodity, business, service and/or entertainment. The term includes any structural or surface area where the symbol is displayed or attached.

*Sign area* means the area within the fewest and shortest straight lines that can be drawn around the outside perimeter of a sign including all decorations and lights but excluding the supports if they are not used for advertising purposes. Each separate face of a sign shall be counted as part of the sign area, except that any neon tube, string of lights, or similar device shall be considered as a two dimensional structure and deemed to have minimum width dimension of six inches.

*Sign, Accessory. Accessory sign* means a sign, other than a principal business sign, that advertises goods or services.

*Sign, Illuminated. Illuminated sign* means a sign that incorporates any artificial lighting produced by electrical, mechanical, thermal or chemical means or uses light reflective materials to draw attention to or light the sign.

*Sign, Off-Lot. Off-lot sign* means a sign which directs attention to, advertises or expresses an idea, product, business activity, service, or entertainment which is not conducted, sold, or offered upon the lot where such sign is located.

*Sign, Flashing. Flashing sign* means an illuminated sign, which is not stationary or constant in intensity and/or color and that rotates or oscillates or varies faster than five cycles per minute.

*Sign, Principal Use. Principal use sign* means a sign containing the name of and/or directing attention to a particular business, profession or other principal use on a lot. A "for sale" sign or "lease" sign relating to the lot on which it is displayed shall be deemed a principal use sign when a building and/ or lot is unoccupied or vacant and offered for sale or lease.

*Single ownership* means possession of a lot under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than ten (10) years, regardless of any division of such land into separate parcels for the purpose of financing or tax purposes.

*Site plan* means map, plan and supporting information required pursuant to Chapter 17.32 for use specified in Section 17.12.010.

*Site plan approval* means an approval by the town planning board pursuant to this code.

*Skid trail* means a trail or rough road used to move a tree from the place where it was cut to a pile or landing where it is loaded onto a truck.

*Solar collector* means a structure, device, or combination of devices or structures including supports that transform direct solar energy into thermal, chemical or electrical energy, and that contribute to a structure's on-site energy supply.

*Solar Collector, Detached. Detached solar collector* means a solar collector, as defined herein physically detached from the structure for which solar energy is to be supplied.

*Solar energy system* means a complete design or assembly consisting of a solar collector, an energy storage facility (where used) and components for the distribution of transformed energy provided that the system is independent of any conventional energy system. Passive solar energy systems may be included in this definition except when they function primarily as a structural and recreational feature.

*Solar reflector* means a device used or designed to be used to increase the solar radiation received by the solar collector.

*Solid waste disposal facility* means any facility as defined, permitted and regulated by New York State Department of Environmental Conservation (NYSDEC).

*Solicitor* means and includes any person who goes from place to place or house to house, or who stands in any street or public place taking or offering to take orders for goods, wares or merchandise, except newspapers, milk and water, or for services to be performed in the future, or for making, manufacturing or repairing any article or thing whatsoever for future delivery.

*Specialized repair* means a building or lots used primarily for the indoor repair of highly technical specialized equipment, such as: electronic equipment, electrical systems, computer systems and circuits and other similar operating and support systems. This definition does not include a principal or accessory uses that involve mechanical and body repair, painting or refinishing of motor vehicles, small engines, appliances or similar products.

*Stable, Commercial. Commercial stable* means any lot or structure used or maintained for the boarding, breeding, sale, training, riding, or driving of horses, mules or donkeys for compensation or incidental to the operation of any club, association or similar organization.

*Stable, Private. Private stable* means an accessory structure to a residential use in which a horse, mule or donkey is kept for private use and not for remuneration.

*Standard cord* means a cut pile of wood measuring four feet by four feet by eight feet.

*State* means the state of New York.

*Steep slope* means any geographic area of the town having natural topography with slopes of a ratio of fifteen (15) percent, 1.5 feet rise in ten (10) feet horizontal distance, or greater.

*Storage facility* means a building or building group designed and constructed for the common, long-term and/or seasonal interior storage of individual or business property. This definition does not include a warehouse/distribution center, truck terminal or other transfer facility for goods, wares or merchandise.

*Story* means a portion of a building which is between one floor and the next higher floor level or roof.

*Stream* means a body of running water flowing continuously or intermittently in a channel of natural formation on the surface of the ground.

*Street* means all streets, highways, roads, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in the town which have been or may hereafter be dedicated and open to public use, or such other public property so designated by any law of the state.

*Structure* means a static construction of *building* materials, composed of one or more parts for use including but not limited to a *building*, stadium, platform, *tower*, shed, display stand, storage bin, *sign*, *fence*, reviewing stand and gasoline/fuel pump.

*Structure, Accessory. Accessory structure* means a *structure* detached from, on the same *lot* with and subordinate to a *principal structure* and used for purposes customarily incidental to those of the *principal structure*. *Accessory structure* includes but is not limited to, portable, removable or permanent enclosure, shade *structure*, carport, garage and storage shed.

*Structure height* means the vertical distance measured from the mean *finished grade* to the highest point of a roof or otherwise to the top of a *structure*.

*Structure, Principal. Principal structure* means a *structure* where the *principal uses* of a lot is conducted. Such *structure* includes any open or enclosed porch, carport, garage or similar *structure* attached to such *structure*.

*Subdivision approval* means an approval process vested in the town planning board pursuant to this code.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other *improvement* of a *structure*, the cost of which equals or exceeds fifty (50) percent of the market value of the *structure* before the *start of construction* of the *improvement*. The term includes *structures*, which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not include either:

1. Any project for *improvement* of a *structure* to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any *alteration* of a historic *structure*; provided, that the *alteration* would not preclude the *structure's* continued designation as a historic *structure*.

*Survey* means a drawing showing, at a minimum, metes and bounds description of a property as prepared by a professional NYS Licensed Land Surveyor.

*Temporary* means a type of period of time allowed by law or determined to be appropriate for the facts and circumstances relating to a condition or situation under consideration for permit or approval by a town official or an authorized board of the town.

*Tenant* means any person, whether alone or with others, in exchange for consideration in any form given, who occupies or uses the whole or a part of a *building* or land.

*Thinning* means a selective cutting or deadening of an immature stand of trees for the purpose of upgrading the quality and/or growth of the trees that remain.

*Timber harvesting* means timber harvest activity that removes trees whose volume in any year is greater than twenty (20) standard cords of wood or one thousand six hundred (1,600) cubic feet of wood or ten thousand (10,000) board feet of timber as measures by *international one-quarter inch log rule*. In addition to normal harvesting activities, the clearing of lands for agricultural or *building* purposes or utility line *rights-of-way* which shall remove trees greater than aforesaid volumes shall specifically be included within this definition.

*Town* means the town, or the area within the territorial limits of the town, and such territory outside the town over which the town has jurisdiction or control by virtue of any constitutional or statutory provision.

*Town board* means the *town board* of the town of Big Flats.

*Town code* means the officially adopted code of the town of Big Flats.

*Town Enforcement Officer. See Code enforcement officer (CEO).*

*Townhouse* means a *building* consisting of three or more attached *one-unit dwellings* each having separate entrances and common vertical party walls. (See also *Building, semi-detached*.)

*Traffic control devices* means all *signs*, signals, markings and devices placed or erected in accordance with the Manual for Uniform

*Traffic Control Devices* (MUTCD) and by authority of a public body or persons having jurisdiction for the purpose of regulating, warning or guiding traffic.

*Transient guest* means any person who shares a *dwelling unit* on a nonpermanent basis for not more than thirty (30) days. (See the New York State Sanitary Code.)

*Travel Trailer*. See *Recreational vehicle*.

*Truck terminal* means a *building* or part of a *building* or *lot* used for the short-term storage, transfer and/or transit of goods, wares and merchandise for the *owner* or others by truck or rail transport.

*Undeveloped* means those plats where twenty (20) percent or more of the *lots* within the plat are unimproved unless existing conditions, such as poor drainage have prevented their *development*.

*Uniform code* means the New York State Uniform Fire Prevention and Building Code.

*Unregistered motor vehicle* means a *motor vehicle* which does not have a current or valid vehicle registration.

*Use* means an activity on a *lot*.

*Use, Accessory*. *Accessory use* means a *use* which is controlled by the person exercising a *principal use*, incidental to and customarily associated with the *principal use* and located on the same lot as the *principal use*.

*Use, Adult*. *Adult use* means a public or private business or establishment or any part thereof, which excludes persons under eighteen (18) years of age and which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portions of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental and/or display of materials, products, entertainment or *services* which are of a sexually explicit nature.

*Use, Extractive*. *Extractive use* means the removal and sale of any soil, gravel or earth product from a property. Grading in preparation for site construction under approved plans, where earth material is moved on-site or removed off-site incidental to construction activities, shall not be deemed an *extractive uses*.

*Use, Nonconforming*. *Nonconforming use* means the *use* of *structure* or *lot*, legally existing at the time of enactment of this code, which does not conform to the zoning requirements of the *district* in which it is situated.

*Use, Principal*. *Principal use* means a *main* or *primary use* of a *lot* or *structure*.

*Vehicle filling station* means a *lot*, including any *structure* thereon or any part thereof, that is *used* primarily for the sale of fuel, oil and other petroleum products for *motor vehicles* on-site, and may include *accessory uses* for the sale of *motor vehicle* accessories, facilities for lubricating, washing, and motor vehicle repair, but shall not include auto body work, welding or painting.

*Vehicle repair* means a *lot* including any *structure* thereon or any part thereof, that may have as a *principal use* a *vehicle filling station*, and may also include welding, painting, and vehicular body and/or engine work and the accessory sale of related vehicle parts, maintenance products, and accessories. A *salvage yard* is not to be considered as meeting this definition.

*Vehicle sales* means a *lot* and/or a *structure* or any part thereof used for the display, sale or lease of new or *used* automobiles, trucks (five tons or less) or trailers (eighteen (18) feet in length or less), motorcycles, *recreational vehicles*, snowmobiles, boats and light industrial vehicles.

*Vehicle Sales and/or Repair, Heavy Equipment*. *Heavy equipment vehicle sales and/or repair* means a *lot*, including any *structure* thereon, or any part thereof used for the display, sale, lease or repair of new or used tractor trailers, heavy construction equipment, and large scale agricultural equipment.

*Veterinary hospital* means a *lot*, including *structures* thereon or any part thereof, used for the treatment and/or examination of animals illness including facilities for boarding animals receiving examination or treatment. This definition is deemed to include animal *hospital* or clinic.

*Warehouse/distribution center* means a *lot*, including any *structure* thereon or any part thereof, *used* for storing of goods, wares, and merchandise, whether for the *owner* or for others, prior to shipment to final *retail* sale operation, whether it is in public or private ownership.

*Water board* shall be the board established by the *town board* under this code to act as the governing body having the authority and right to exercise all powers and functions of the *water districts* and their *water department*.

*Water department* means the town *water department*.

*Water districts* means those portions of the town of Big Flats that have been established as special *improvement districts* for the purposes of furnishing potable water supply in accordance with the provisions of general municipal law and/or any approved extensions thereto.

*Waterbars* means small humps or diversions for the purpose of erosion and sediment control built up across *roads* and *landings*, which catch and divert runoff into adjacent vegetated *areas* and release the runoff in a nonerosion manner.

*Watercourse* means any river, stream or naturally occurring channel of water or any manmade culvert that flows directly into one of the aforementioned.

*Wholesale business* means a business or establishment which is engaged in selling primarily to retailers or jobbers rather than directly to the public.

*Yard, Front. Front yard* means an open *area* bounded by: (1) a *front lot line*, (2) a *front yard setback*, and (3) either: (a) two side *lot lines*, or (b) a side *lot line* and another *front lot line*, or (c) two other *front lot lines*.

*Yard, Rear. Rear yard* means an open area bounded by: (1) a rear *lot line*; (2) a *rear yard setback* related to the rear *lot line*; and (3) two *side yard setbacks*.

*Yard, Side. Side yard* means an open *area* bounded by: (1) a side *lot line*; (2) a *side yard setback* related to the side *lot line*; (3) a *front yard setback*; and (4) either: (a) rear *lot line*, or (b) another side *lot line*, or (c) another *front yard setback*.  
(LL No. 18, 2001 § 1)

#### **1.04.020 Interpretation.**

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.  
(LL No. 18, 2001§ 2)

#### **1.04.030 Rules of construction.**

The following rules of construction of language shall apply to the text of this code:

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. Words used in the masculine form shall also include the feminine.
- D. The word "person" includes an individual, partnership, association, firm or corporation.
- E. The words "used" or "occupied" as applied to any land or *building* shall be construed to include the words "intended, arranged or designed to be used or occupied."
- F. A *building* or *structure* includes any part thereof.



G. The phrases, "to erect," "to construct" and "to build" each has the same meaning and includes to excavate for a *building* and to relocate a *building* by moving it from one location to another.

(LL No. 18, 2001§ 3)

#### **1.04.040 Acts by agents.**

When an act is required by the *town code* such acts shall be construed to include those performed by an authorized agent on behalf of the principal.

(LL No. 18, 2001§ 4)

#### **1.04.050 Prohibited acts.**

Whenever in the *town code* any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

(LL No. 18, 2001§ 5)

#### **1.04.060 Computation of time.**

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day if the last day is a regular scheduled workday of the town and if it is not such a workday it shall also be excluded.

(LL No. 18, 2001§ 6)

#### **1.04.070 Justice.**

The provisions of the town code, and all proceedings under them, are to be construed with a view to effect their objectives and to promote justice.

(LL No. 18, 2001§ 7)

#### **1.04.080 Revival of ordinances or laws.**

The repeal of an ordinance or local law shall not repeal the repealing clause of an ordinance or local law or revive any ordinance or local law which has been repealed thereby.

(LL No. 18, 2001§ 8)

### **Chapter 1.08**

#### **GENERAL PENALTY**

Sections:

##### **1.08.010 Violations--Penalties.**

##### **1.08.010 Violations--Penalties.**

A. A person violating any provisions of the town code shall be guilty of a violation unless the infraction is made a misdemeanor by the applicable chapter of the town code.

B. Except in cases where a different punishment is prescribed by a chapter of the town code, a person convicted of a misdemeanor under the town code shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment not to exceed one year, or by both such fine and imprisonment.

C. Except in cases where a different punishment is prescribed by a chapter of the town code, a person convicted of a violation of a chapter of the town code shall be punishable by a fine of not less than fifty dollars (\$50.00) and not more than three hundred fifty dollars (\$350.00) for conviction of a first offense; upon conviction of a second offense, both of which were committed within a period of two years, a fine of not less than three hundred fifty dollars (\$350.00) and not more than seven hundred (\$700.00),

and upon conviction of a third or subsequent offense, all of which were committed within a period of two years, punishable by a fine not less than seven hundred dollars (\$700.00) or not more than one thousand dollars (\$1,000.00); or by imprisonment not to exceed fifteen (15) days, or by both such fine and imprisonment.

D. A person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the town code is committed, continued or permitted by such person, and such person shall be punishable accordingly.  
(LL No. 19, 2001§ 1)  
(LL No. 5, 2009)

## **Chapter 1.12**

### **RIGHT OF ENTRY FOR INSPECTION**

Sections:

**1.12.010 Inspection authority.**

**1.12.020 Consent to entry for inspection.**

**1.12.030 Chapter provision to control--Exception--Refusal to allow inspection.**

#### **1.12.010 Inspection authority.**

Whenever any officer or employee of the town is authorized to enter any building or premises for the purpose of making an inspection to enforce any chapter of the town code, the officer or employee may enter such building or premises at all reasonable times to inspect the same; provided, that the officer or employee shall effect entry in a manner provided in Section 1.12.020 of this chapter, except in an emergency situation, or when consent of the person having charge or control of such building or premises has been otherwise obtained.

(LL No. 20, 2001§ 1)

#### **1.12.020 Consent to entry for inspection.**

If the building or premises to be inspected is occupied, the authorized officer or employee shall first present proper credentials and request entry. If such building or premises is unoccupied, the officer or employee shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and demand entry. If consent to such entry is not given, the authorized officer or employee shall have recourse to every remedy provided by law to secure entry.

(LL No. 20, 2001§ 2)

#### **1.12.030 Chapter provision to control--Exception--Refusal to allow inspection.**

This chapter shall be controlling over any other local ordinance, law, chapter of the town code or part thereof on the same subject, whether heretofore and hereafter adopted, unless such local ordinance, law, chapter of the town code or part thereof on the same subject provides differently by an expressed reference to this chapter. Notwithstanding any other local ordinance, law, chapter of the town code or part thereof on the same subject, whether heretofore or hereafter adopted, it shall not be a violation of this chapter to refuse or fail to consent to an entry for inspection.

(LL No. 20, 2001§ 3)